



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 3908-97

28 December 1999

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) Case Summary  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the United States Navy filed enclosure an application with this Board requesting that a nonjudicial punishment (NJP) be removed from her naval record.

2. The Board, consisting of Mr. Flood, Mr. Cali and Mr. Pfeiffer, reviewed Petitioner's allegations of error and injustice on 14 December 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner's application was filed in a timely manner.

c. Petitioner reenlisted in the Navy on 26 March 1993 for six years in the rate of IS1 (E-6). At that time, she had completed more than eight years of active service on prior enlistments. The record reflects excellent service with no disciplinary infractions.

d. Petitioner continued to serve well until June 1996, when an investigation was begun following a complaint from an AD2 Pablo O... that she was dancing in a lewd manner in a nightclub in Palma, Spain. The investigator conducted 36 interviews with individuals who might have knowledge of the events. Many of the interviewees stated that a blond female petty officer from the USS GEORGE WASHINGTON (CVN 73) had been dancing in a lewd manner. Petitioner was later identified as that female petty officer. On 9 June 1996 the investigating officer concluded that Petitioner

Petitioner did visit the nightclub on 29/30 June 1997 and that she "did engage in sexually imitative or suggestive dancing in a public establishment with a male person as yet unidentified ..". On 11 June 1996 she received NJP for the following offense:

In that (Petitioner), Seal Delivery Vehicle Team TWO, assigned TAD to Commander, Cruiser Destroyer Group TWO, .... did at Tokyo Joe's Nightclub, Maguluf, Spain, on or about 29 May 1996, wrongfully commit indecent acts with an unknown male, by simulating sex acts in a public place through the demonstration of sexual intercourse, groping him and biting his crotch area.

The punishment imposed was forfeiture of pay totaling \$1,590 and a reduction in rate from IS1 to IS2 (E-5). Subsequently, the "unknown male" was identified and he stated that Petitioner was the women with whom he was dancing.

e. The performance evaluation for the period 1 December 1995 to 11 June 1996 is adverse with an individual trait average of 2.29 and a non-recommendation for advancement. The evaluation comments state, in part, as follows:

(Her) performance was inconsistent and well below the standard expected of an E-6 LPO. .. Required numerous verbal counseling sessions and routine direct supervision.

- Lack of Professionalism was a continual source of distraction.
- Subsequently returned to her parent command five weeks prior to the end of her Med deployment. ...

Pending a return to her more characteristic top-notch performance (she) is not recommended for advancement.

In his endorsement on her letter of rebuttal, the commanding officer stated that although there appeared to be some merit to her contentions, he declined to submit a revised evaluation until two ongoing formal investigations in her case were finalized.

f. On 6 August 1996 Petitioner filed an 11 page "request for redress of wrongs" with four enclosures. In her submission, she essentially contends that she was subjected to disparate and discriminatory treatment because she was one of a very few female petty officers on board GEORGE WASHINGTON. On 6 February 1997 the Commander, Naval Special Warfare Group TWO denied her request for redress of wrongs. It was noted in the denial letter that the officer who imposed the NJP was in the best position to judge the

credibility of the witnesses and there was no evidence that indicated that there was an abuse of discretion in this matter. It was also noted that the petty officer third class she was dancing with had also received NJP and was being processed for an administrative discharge. The denial also addresses her complaint of degrading and demeaning treatment by her supervisor.

g. Subsequently, Petitioner filed a complaint with the inspector general (IG) with a list of 11 discrepancies in the handling of her case. In her complaint she analyzes each of the statements against her and identifies what she alleges are 89 discrepancies in those statements. On 12 February 1997 the Commander Cruiser Destroyer Group TWO found that none of the 11 discrepancies had any merit and forwarded the complaint up the chain of command.

h. Since the NJP Petitioner has been awarded a Navy and Marine Corps Achievement Medal, received excellent evaluations, was readvanced to IS1 on 16 July 1999, and continues to serve in an excellent manner.

i. Petitioner has requested that her case be handled under the "whistle blower" provisions of 10 U.S.C. 1034 and implementing directives. However, informal coordination with a representative of the Department of Defense Inspector General reveals that she is not entitled to such treatment.

#### CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants partial favorable action. Concerning Petitioner's request to remove the NJP, the Board notes that the officer who imposed the NJP considered the investigation and the witnesses present at the NJP and concluded that the preponderance of the evidence showed that she had committed the offense. In reaching its conclusion, the Board is also aware that none of her allegations have been given any credence in the several reviews conducted since the NJP. Accordingly, the Board concludes that there is no evidence of an abuse of discretion in this matter and the NJP should remain in the record.

However, the Board notes her excellent record both before and after the events which led to the NJP and believes that, in retrospect, a punishment which included an unsuspended reduction in rate was unduly severe. Therefore, the Board concludes that the punishment imposed at the NJP should be modified to show that the reduction in rate was suspended for a period of six months and was then remitted without further action. Accordingly, the

record will show that she has served continuously as an IS1.

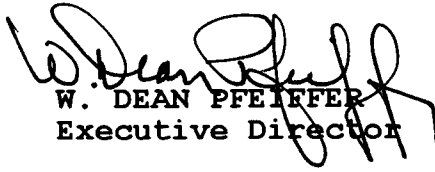
RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that the reduction in rate imposed at the 11 July 1996 NJP was suspended for six months.
  - b. That Petitioner's request for removal of the NJP and the related performance evaluation from the record be denied.
  - c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.
  - d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

  
ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

  
W. DEAN PFEIFFER  
Executive Director